

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-13588

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P/S

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Respondent-Appellee

-against-

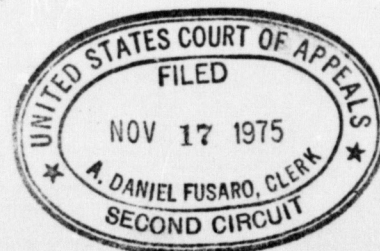
LOUIS WOLFISH,

Petitioner-Appellant.

APPENDIX

STANLEY H. FISCHER,
Attorney for Petitioner-Appellant
Two Park Avenue
New York, N.Y. 10016
MU 3-0054

THOMAS CAHILL
Acting United States Attorney
United States Courthouse
Foley Square
New York, N.Y.



PAGINATION AS IN ORIGINAL COPY

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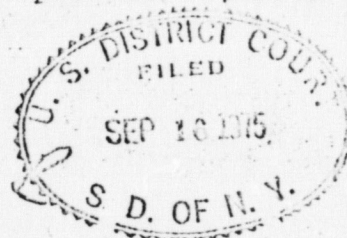
DOCKET ENTRIES	1a
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DATE	PROCEEDINGS
16-75	Filed the following papers received from Magistrate Raby. (Mag. #75-504) Docket Entry Sheet - to have counsel assigned for an appeal - Stanley EXXH Fischer, 2 Park Avenue NYC 10016 Appointment of Counsel - Stanley Fischer- 2 Park Avenue, NYC 10016 Financial Affidavit -
5-19-75.	Filed letter dated December 30-74, from Louis R. Wolfish to Judge Pierce.
6-3-75	Filed Order transmitting sealed exhibit (exhibit 4) from the District Court vault to the U.S.C.A. ...Pierce J. dtd: May 28-75.
6-4-75	Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.
6-24-75	Filed Stipulation designating exhibits on appeal.
6-24-75	Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.
7-22-75	Filed CJA Form 21 Copy 5 appointing Handwriting Consultants Inc., dated 6-23-75.Pierce, J.
7-22-75	Filed CJA Form 21 Copy 2 approving payment to Handwriting Consultants Inc., dated 6-23-75.Pierce, J.
7-22-75	Filed CJA Form 21 Copy 5 appointing Felix F. Lehmann (handwriting analyst) dated 6-23-75.....Pierce, J.
7-22-75	Filed CJA Form 21 Copy 2 approving payment to Felix F. Lehmann (handwriting analyst) dated 6-23-75.....Pierce, J.
9-16-75	Filed def't's. demand for examination and copying of sealed Court Exhibit 4 pursuant to 5 U.S.C. 552.
9-16-75	FILED MEMO ENDORSED on def't's. pro se petition for relief pursuant to 5 U.S.C. Sec. 552. The petition is dismissed for lack of subject matter jurisdiction.Pierce, J. (notice mailed by Pro Se Clerk)
9-24-75	Filed def't's. notice of appeal from the order of Judge Pierce entered on 9-16-75. Mailed copies to: Louis R. Wolfish, 64 Essex St., N.Y.C. 10002 and U.S. Attorney's Office.
9-26-75	Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

2a
LOUIS WOLFISH
64 Essex Street
New York, New York 10002
September 12, 1975

Honorable Lawrence W. Pierce
United States District Judge
Southern District of New York
Foley Square
New York, New York 10007



Re: U.S.A. vs. Louis Wolfish
73 Cr. 1036

Dear Sir:

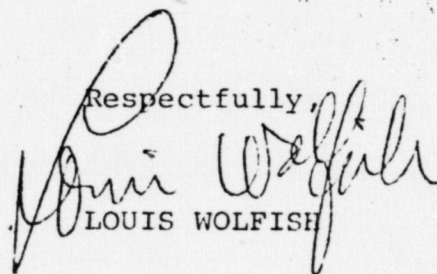
Demand is hereby respectfully made for examination and copying of each and every document marked sealed Court Exhibit 4 in the above captioned matter pursuant to the Freedom of Information Law, 5 U.S.C. 552.

The aforesaid demanded documents were ordered sealed by the court on or about January 9, 1975.

The said order is entirely arbitrary, capricious, illegal, unreasonable, not in the public interest, not in the interests of justice, an abuse of discretion and in violation of due process and equal protection.

Your early reply pursuant to 5 U.S.C. 552, would be greatly appreciated.

Respectfully,


LOUIS WOLFISH

1 1a pm 1 jbrf

2 AFTERNOON SESSION

3 2:35 p.m.

4 (Jury not present.)

5 THE COURT: Now, let me ask that, from now on,
6 whatever arrangements you have to make, make them during
7 the lunch hour. We took an hour and a half for lunch today
8 and it should have been enough time for getting this done
9 without encroaching on our court time and please see that this
10 is done in the future.

11 On the 3500 question, I have examined the series
12 of documents identified as 3569 in order to determine
13 whether they have to be turned over to the defendant pursuant
14 to the provisions of 18 United States Code 3500.

15 Before it can be said that 3500 applies, it must
16 first appear that there are statements made by the witness
17 who has just testified and, additionally, that the
18 statements relate to the subject matter of the witness'
19 direct testimony.

20 I find here that some of the documents submitted
21 to the Court cannot be said to be statements made by the
22 witness, Mr. Gatti and, further and more importantly, I
23 find that the material submitted relates to matters which
24 were not the subject of the witness' direct testimony.

25 Accordingly, I rule that the documents need not

1 jbrf 2

2 be turned over to the defendant pursuant to 3500.

3 Further, with respect to the grand jury testimony
4 which Mr. Schatten has asked to be received in evidence,
5 that is, the testimony of Rabbi Horowitz, I find that it is
6 admissible as substantive evidence on the authority of
7 the United States versus DeSisto, 329 Fed. 2nd 929, Second
8 Circuit, 1964. There the Court clearly stated that the rule
9 limiting the use of prior statements by a witness subject to
10 cross examination to their affect on his credibility
11 would be inapplicable to testimony transcribed by a court
12 reporter before a grand jury.

13 See that case at 933 and 934 and, to the
14 same effect, see United States versus Klein 488 Fed. 2nd
15 481 Second Circuit, 1973.

16 I therefore rule that the grand jury transcript
17 is admissible as affirmative evidence of whatever is
18 contained therein.

19 MR. ROSEN: May I take exception to the rules?

20 THE COURT: Yes. State them specifically, please.

21 MR. ROSEN: On the question of the grand jury
22 testimony, I think that clearly in this particular case,
23 when the witness has taken the Fifth Amendment, and I put
24 some rather direct questions, I thought, to him to allow
25 this type of grand jury testimony where he perhaps implicates

1 jbrf 3

2 himself but certainly I don't think he has been subject to
3 cross examination at that time; I think that it is highly
4 prejudicial to Mr. Wolfish to put in a prior statement.
5 The man said he did not recall the testimony but he didn't
6 deny it either.

7 Now, he was called as a Government witness. They
8 vouched for his veracity and when he didn't turn out to
9 their liking they now try to use the grand jury testimony
10 affirmatively against the defendant.

11 I think it is improper and I except to
12 your Honor's ruling.

13 THE COURT: That states the sole basis for the
14 objection?

15 MR. ROSEN: That is correct.

16 THE COURT: Anything further with respect to the
17 other ruling.

18 MR. ROSEN: On the 3500 material or the alleged
19 3500 material which your Honor looked at in camera --

20 MR. SCHATTEN: None, 3500 material.

21 MR. ROSEN: Since it was viewed in camera by your
22 Honor without affording the defense counsel a chance to look at
23 it, I would ask that your Honor seal it and make it a
24 part of the record and I respectfully except. I can't
25 object to something I haven't seen.

THE COURT: It will be marked as Court's Exhibit 4. It is in my chambers and we will have it downstairs this afternoon and the clerk is directed to seal it and mark it as Court's Exhibit 4.

Nothing further at this point?

MR. ROSEN: Yes, Judge: two things. I have not had a ruling by your Honor on the application I made yesterday for the transcript. As the trial goes, I need it more and more. I don't know if your Honor has granted that application.

THE COURT: I indicated yesterday that if need was established pursuant to the information required by the affidavit that I would sign the order.

Why do you require the suppression hearing transcript?

MR. ROSEN: Well, your Honor, Major Halpern, I believe, is going to testify next or in a few minutes and I just don't have total recall on what he said. But I guess it will be too late anyway. I guess I wouldn't be able to have it now unless it is typed up.

THE COURT: Well, it could be that given the need for it now, if the order is signed, which means you are going to get it anyhow, that the court reporters will make available the clerk's copy which is generally provided

7a

UNITED DISTRICT OF NEW YORK

U.S.A. v. Louis Wolfish 73 Cr. 1035

ENDORSEMENT ORDER

The letter attached hereto is deemed to be a pro se petition for relief pursuant to 5 U.S.C. § 552. The provisions of 5 U.S.C. § 551(1)(B) specifically exclude the courts of the United States from the operation of the Administrative Procedure Act.

The petition is dismissed for lack of subject matter jurisdiction.

So ordered.

Dated: New York, N.Y.
Sept. 15 1975

Lawrence W. Pierce
LAWRENCE W. PIERCE
U.S.D.J.

MICROFILM

SEP 19 1975

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Respondent-Appellee

~~XXXXXXXX~~

against

LOUIS WOLFISH,

Petitioner-Appellant

~~XXXXXXXX~~

Index No.

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at Jersey City,
New Jersey

That on the 17th day of November, 1975 deponent served the annexed
Appendix and Brief for Appellant
on THOMAS CAHILL, Acting United States Attorney
attorney(s) for Respondent-Appellee
in this action at United States Courthouse Foley Square, New York
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.

Sworn to before me

this 17th day of November 1975

1975

Debra Bokuniewicz

The name signed must be printed beneath

ALAN L. FRIEDMAN
NOTARY PUBLIC, State of New York
No. 30-6410391
Qualified in Nassau County
Commission Expires March 30, 1976

8a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
SEP 24 12 49 PM '75
S.D. OF N.Y.

-----x
UNITED STATES OF AMERICA,

Plaintiff,

NOTICE OF APPEAL

-against-

73 Cr. 1036 (LWP)

LOUIS WOLFISH,

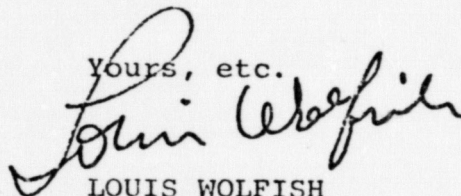
Defendant.
-----x

PLEASE TAKE NOTICE, that the undersigned, LOUIS WOLFISH, the defendant herein, does hereby appeal to the United States Circuit Court of Appeals, Second Circuit, from each and every part of the order of this court by the Honorable Lawrence W. Pierce, United States District Judge, dated September 15, 1975.

Dated: New York, New York
September 24, 1975

TO: U.S. ATTY
DEFT
U.S. COURT OF APPEALS

Yours, etc.



LOUIS WOLFISH

Defendant Pro Se

64 Essex Street

New York, New York 10002

254-8601

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